

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et Procureur général du Canada

The Honourable L'honorable
Ray Hnatyshyn, P.C., Q.C., M.P./C.P., C.R., Député

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November 20th 1987

The Honourable Don Mazankowski
Deputy Prime Minister
Chairman, Operations Meeting
Room 207
Langevin Building
Ottawa, Ontario
K1A 0A3

My Dear Colleague:

It has come to my attention that the Department of National Defence's proposal to promulgate a new Canadian Forces Administrative Order (CFAO) concerning sexual misconduct has been scheduled for discussion at the Operations Meeting on Monday, November 23.

As I understand it, the Department of National Defence wishes to promulgate a new CFAO which would permit the discharge or exclusion of homosexuals on the basis of conduct or behaviour rather than orientation alone.

As you recall, the Parliamentary Subcommittee on Equality Rights recommended in their October, 1985 report, Equality for All, that the Canadian Human Rights Act be amended to prohibit discrimination on the basis of sexual orientation, and that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Act as amended. Our government response, which was approved by Cabinet, was tabled on March 4, 1986 in Toward Equality.

In that response a Commitment was made to "take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction".

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While I recognize the need for the Canadian Forces to have a policy concerning unacceptable sexual behaviour, I believe that there is a serious risk that the proposed CFAO would infringe the equality guarantees in the Charter, particularly as it singles out homosexuals and it applies to all conduct whether in private or otherwise.

I do not think it is appropriate to discuss the question of sexual orientation solely in the context of this CFAO. Rather the CFAO is part of the overall question of the government's policy on sexual orientation, and how we will give effect to the commitment in Toward Equality. This includes the question of whether sexual orientation should be added to the Canadian Human Rights Act as a means of fulfilling this commitment and if so, what should be the policy relating to the Department of National Defence and the R.C.M.P..

I presented CCSD with a package of proposed amendments to the Canadian Human Rights Act on February 11, 1987 including a proposal to add sexual orientation as a prohibited ground of discrimination. However, CCSD has not yet considered this issue and as a consequence other much needed amendments to the Canadian Human Rights Act are being delayed.

I therefore think it would be in everyone's interest to resolve this one way or the other. I would urge that the overall question of the government's policy on sexual orientation, including the question of a new CFAO on sexual misconduct, be discussed by CCSD as soon as possible. If, however, you propose to have a preliminary discussion in your Operations Meeting, I think Mr. Beatty and I should be in attendance.

With kindest regards, I remain,

Yours sincerely,



Ray Hnatyshyn

c.c.: The Right Honourable Brian Mulroney

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